

INSTRUCTION NO. [5-501 [amended 2002]]

[Definition of "Without Consent"]

As used in these instructions, the term "without consent" means:

[the victim is compelled to submit by force against (himself) (herself) or another];

[the victim is incapable of consent because (he) (she) is:

(mentally defective or incapacitated);

(physically helpless);

(overcome by deception, coercion, or surprise)

(less than 16 years old)].

(incarcerated in an adult or juvenile correctional, detention, or treatment facility and the Defendant is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.)

[The term "force" means (the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender); (the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat)].

Given: _____
District Judge

SOURCE: MCA § 45-5-501 (2001).

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Definition of Without Consent, Source and Comments]

SOURCE: MCA § 45-5-501 (2001).

COMMENT: Cite as MCJI 5-501

The language in italics should be utilized, if applicable, only for offenses committed after October 1, 1999, the effective date of the act which included this language. See Ch. 84, Laws of 1999.

The language in bold should be utilized, if applicable, only for offenses committed after October 1, 2001, the effective date of the act which included this language. See Ch. 562, Laws of 2001.

This instruction should be given only in prosecutions for sexual intercourse without consent under § 45-5-503, selecting applicable bracketed and sub-bracketed language.